



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on March 24, 2020

**NOTICE OF ACTION TAKEN -- DOCKETS DOT-OST-2008-0199 & DOT-OST-2019-0178**

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This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Applicants: **THOMAS COOK AIRLINES SCANDINAVIA A/S (Thomas Cook Scandinavia) and  
SUNCLASS AIRLINES ApS (Sunclass Airlines)**

Date Filed: December 12, 2019

Relief requested: Exemption under 49 U.S.C. §40109 to permit Sunclass Airlines to provide charter foreign air transportation of persons, property, and mail to the full extent authorized by the U.S.-EU Air Transport Agreement. The Joint Applicants also request, under 49 U.S.C. §41303, the transfer and reissuance of Thomas Cook Scandinavia's foreign air carrier permit to Sunclass Airlines.<sup>1 2</sup>

Applicant representatives: Josh Romanow & Laura Jennings, 202-663-8000

DOT analyst: David R. Christofano, 202-366-0584

Responsive pleadings: None.

**DISPOSITION**

Action: Approved in part (exemption authority only) remainder (permit transfer request) deferred. (See remarks below)<sup>3</sup>

Action date: March 24, 2020

Effective dates of authority granted: March 24, 2020, through March 24, 2022.

Basis for approval (bilateral agreement/reciprocity): U.S.-EU Air Transport Agreement.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations of our standard exemption conditions (attached).

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<sup>1</sup> Thomas Cook Scandinavia's foreign air carrier permit, issued on October 3, 2008, by Order 2008-12-2, authorized it to engage in: 1) foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Union, via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; 2) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; 3) foreign charter cargo air transportation between any point or points in the United States and any other point or points; 4) other charters pursuant to the prior approval requirements set forth in 14 CFR Part 212 of the Department's regulations; and 5) charter transportation authorized by any additional route rights made available to European Union carriers in the future; provided, that the holder shall, before it commenced any new service under such additional route rights, provided the Department with evidence that it held a homeland license for that new service (unless it had already provided such evidence to the Department). Such evidence was to have been filed in Docket DOT-OST-2008-0199.

<sup>2</sup> In support of their requests, the Joint Applicants state that Thomas Cook Scandinavia went into bankruptcy proceedings. The Joint Applicants further state that following the acquisition of Thomas Cook Scandinavia's assets by an investment group comprised of Norwegian, Swedish, and United Kingdom investors, those assets were transferred to the newly formed Sunclass Airlines. The Joint Applicants declared that the Danish Transport Authority issued Sunclass Airlines a new Air Operator's Certificate (AOC), and terminated Thomas Cook Scandinavia's old AOC. The Joint Applicants affirm that Sunclass Airlines will employ many of Thomas Cook Scandinavia's former employees as well.

<sup>3</sup> We will address the permit transfer request separately.

Special conditions/Remarks: Based on the record in this case, we found that the applicant, a foreign air carrier of Denmark, is operationally and financially qualified to conduct its proposed operations, and that it is substantially owned and effectively controlled in a manner consistent with the provisions of the U.S.-EU Agreement.<sup>4</sup> We also note that the applicant is properly licensed by its homeland to perform the proposed services. Furthermore, the FAA has advised us that it knows of no reason to withhold this authority. We also find that the authority sought by the applicant is encompassed by the U.S.-EU Agreement. We have verified the applicant's compliance with 14 CFR Parts 203 (Warsaw liability waiver), and 205 (insurance requirements).

Consistent with the U.S.-EU Air Transport Agreement, we are granting Sunclass Airlines exemption authority to operate the following services: 1) foreign charter air transportation of persons and property from any point or points behind any Member State(s) of the European Union, via any point or points in any Member State(s) and via intermediate points, to any point or points in the United States and beyond; 2) foreign charter air transportation of persons and property between any point or points in the United States and any point or points in any member of the European Common Aviation Area; 3) foreign charter cargo air transportation between any point or points in the United States and any other point or points; 4) other charters pursuant to the prior approval requirements set forth in 14 CFR Part 212 of the Department's regulations; and 5) charter transportation authorized by any additional route rights made available to European Union carriers in the future.

With regard to the authority granted here to Sunclass Airlines to conduct transportation authorized by any additional route rights made available to European Union carriers in the future, we are requiring Sunclass Airlines, before it commences any new service under this authority, to provide us, in Docket DOT-OST-2019-0178, with evidence that it holds a homeland license for that new service, unless it has already provided such evidence.

**Action taken by: Brian J. Hedberg, Director, Office of International Aviation**

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) CAI Alitalia was qualified to perform its proposed operations; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:*  
<http://www.regulations.gov>

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<sup>4</sup> We make this finding based on Article 2 (Reciprocal Recognition of Regulatory Determinations with Regard to Airline Fitness and Citizenship) of the Protocol to amend the U.S.-EU Air Transport Agreement, signed June 24, 2010.

## Foreign Air Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 14 CFR Parts 129, 91, and 36 and 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Industry Representative (IIR) (formerly referred to as International Principal Security Inspector) to advise the IIR of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in a Member State of the European Union;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380);
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States; and
- (12) Be subject to all applicable provisions of any treaty, convention or agreement affecting international air transportation now in effect, or that may become effective during the period this exemption remains in effect, to which the United States and the holder's homeland are or shall become parties.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.